

BEFORE THE TENNESSEE REGULATORY AUTHORITY

NASHVILLE, TENNESSEE

August 19, 2004

IN RE:

**PETITION OF IRM UTILITY, INC. TO
AMEND CERTIFICATE OF
CONVENIENCE AND NECESSITY**

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**DOCKET NO.
04-00101**

**ORDER APPROVING PETITION TO AMEND CERTIFICATE OF CONVENIENCE
AND NECESSITY AND DENYING MOTION FOR CONSOLIDATION**

This matter came before the Hearing Officer on July 12, 2004 for consideration of the *Petition of IRM Utility, Inc. to Amend Its Certificate of Convenience and Necessity* ("Petition").

Legal Standard for Granting a CCN

No public utility is permitted to begin construction or operation of a new utility facility or service before obtaining approval of the Tennessee Regulatory Authority ("Authority" or "TRA"). The procedure for obtaining a certificate of convenience and necessity ("CCN") evidencing such approval is set forth in Tenn. Code Ann. § 65-4-201(a), which states as follows:

No public utility shall establish or begin the construction of, or operate any line, plant, or system, or route in or into a municipality or other territory already receiving a like service from another public utility, or establish service therein, without first having obtained from the authority, after written application and hearing, a certificate that the present or future public convenience and necessity require or will require such construction, establishment, and operation, and no person or corporation not at the time a public utility shall commence the construction of any plant, line, system or route to be operated as a public utility, or the operation of which would constitute the same, or the owner or operator thereof, a public utility as defined by law, without having first obtained, in like manner, a similar certificate . . .

Background

On August 7, 2003 IRM Utility, Inc. ("IRM") filed an application for a CCN in Docket No. 03-00467. On November 10, 2003 the Authority approved IRM's application and granted IRM a CCN to provide sewer service to two (2) customers in Sevier County, Tennessee.¹

IRM filed the *Petition* on March 31, 2004. The *Notice of Hearing* for this docket was issued on June 24, 2004 noticing the Hearing on the merits of the *Petition*.

On July 1, 2004 IRM filed its *Wastewater Service Tariff* ("*Tariff*").² IRM's *Tariff* lists rates for commercial and residential services and IRM's rules and regulations. The *Tariff* also contains a form sewer subscription contract and a description of management practices. Also on July 1, 2004 IRM filed its *Motion for Consolidation* seeking to consolidate this docket with Docket Nos. 04-00152 and 04-00153.

Petition to Amend CCN

The *Petition* requests an expansion of IRM's authorized service area to include a portion of Roane County, Tennessee known as Emory Pointe. A map showing the area to which IRM proposes to extend its service is attached to the *Petition*. IRM filed a rate schedule with the *Petition* stating that the residential sewer rate for Emory Pointe will be thirty-four dollars and ninety-five cents (\$34.95). This rate schedule comports with the rate schedule set forth in the July 1, 2004 *Tariff*.

In its *Petition*, IRM contends that the City of Kingston, the Harriman Utility Board and the Cumberland Utility District of Roane and Morgan Counties have all declined to provide wastewater treatment service to Emory Pointe. In support of this contention, IRM attached a

¹ See *In Re Application of Integrated Resource Management Utility, Inc for a Certificate of Public Convenience and Necessity to Provide Wastewater Systems Services*, Docket No. 03-00467, *Order Approving Application for a Certificate of Public Convenience and Necessity, Tariff and Special Contract*, p. 4 (March 16, 2004)

² The *Tariff* became effective on July 31, 2004 pursuant to TRA Rule 1220-4-1- 04.

letter from City of Kingston Utilities Director James W. Pinkerton stating that the City of Kingston would not be interested in owning or operating wastewater facilities for Emory Pointe; a letter from Harriman Utility Board Director of Gas, Water and Sewer Operations James Burnham stating that the Harriman Utility Board has declined to take over wastewater operations for Emory Pointe; and a letter from Cumberland Utility District General Manager Ed Roberts stating that the Cumberland Utility District is not interested in maintaining the sewer package plant for Emory Pointe.

July 12, 2004 Hearing

The Hearing Officer considered the *Petition* of IRM at a duly noticed hearing on July 12, 2004. Attorney Charles B. Welch appeared on behalf of IRM. IRM Vice President Scott Williams appeared and offered testimony in support of the *Petition*. At the conclusion of the Hearing and upon consideration of the *Petition*, Mr. William's testimony, and the record as a whole in light of the legal standard set forth at Tenn. Code Ann. § 64-4-201(a), the Hearing Officer approved the *Petition*.

The Hearing Officer also considered and denied the *Motion for Consolidation* because the *Notice of Hearing*, which was issued by the Authority prior to IRM's filing of the *Motion for Consolidation*, did not reference Docket Nos. 04-00152 and 04-00153 and therefore did not provide notice to the authorities of, and the public utilities operating in, the municipalities or territories potentially affected by the petitions pending in those dockets.³

³ Tenn. Code Ann. § 65-4-203(b) states "In all proceedings under this section, the authority shall give at least ten (10) days notice to the authorities of, and the public utilities operating in, the municipality or territory affected "

IT IS THEREFORE ORDERED THAT:

1. The *Petition of IRM Utility, Inc to Amend Its Certificate of Convenience and Necessity* to expand its service area to include Emory Pointe in Roane County, Tennessee, as shown in the map attached to the *Petition*, is approved.
2. The *Motion for Consolidation* of Docket Nos. 04-00152 and 04-00153 is denied.

A handwritten signature in black ink, appearing to read "Randal Gilliam", written over a horizontal line.

Randal Gilliam
as Hearing Officer